In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 26.07.2011.

In the matter of:

Hindustan Forests Company Private Limited in Voluntary Liquidation/winding up subject to supervision of Court.

.... Petitioner

Versus

The State of Jammu & Kashmir through the Chief Secretary to the Government of Jammu & Kashmir and others.

... Respondents

CORAM: HON'BLE MR. JUSTICE PERMOD KOHLI

Present: Mr.Rajeev Sawhney, Senior Advocate, with
Mr.Sanjeev Anand and Mr.Munishwar Puri, Advocates,
for the petitioner.

Mr.RK Chhibbar, Senior Advocate with
Mr.Anand Chhibbar & Ms.Meenu Sharma, Advocate, for respondent No.1.

Mr. LM Suri, Senior Advocate, with
Mr.Deepak Suri, Advocate.

PERMOD KOHLI, J.

The petitioner-Company, namely, Hindustan Forests Company Private Limited was ordered to be wound up vide order

dated 27.2.1975 passed in Company Petition No. 169 of 1974 under Section 433 (a) of the Companies Act, 1956 and B.K.Kapoor, one of the share-holder of the Company was appointed as the Liquidator for the Company. Present petition has been filed under Section 446 read with Sections 526, 518, 542 and 543 of the Companies Act, 1956 against the State of Jammu and Kashmir, its functionaries, United Commercial Bank, J & K State Financial Corporation and the Hindustan Ropeways & Saw Mills Co. Pvt. Ltd., Srinagar for a decree for (1) recovery of Rs.1,59,95,000/- on account of damages; (2) in the alternative, for restoration of the assets and properties of the Company; (3) for rendition of accounts since January, 1969 till the expiry of period of forest lease; (4) refund of Rs.35,000/- as security deposit etc.

The Company petition was decided by this Court vide judgment dated 27.2.1990 and a decree for rendition of accounts came to be passed. Shri Ujjagar Singh, a retired Judge of this Court was appointed as the Commission for settlement of the accounts. Judgment dated 27.2.1990 became subject matter of challenge in five Company Appeals No.26, 31, 38, 40 and 41 of 1990. All the appeals except Appeal Nos.26 and 38 of 1990, came to be dismissed vide order dated 20.3.1996. This judgment of Hon'ble Division Bench was also challenged before Hon'ble the Supreme Court of India in Civil Appeals No.4413, 4416 and 4417 of 1997. Hon'ble Supreme Court of India vide judgment dated 22.9.2004, while upholding part of the judgment/findings, set aside the judgment of Hon'ble Division Bench as also of the Company Court (learned Single Judge) and directed the High Court (Single Judge) to dispose

of the Company Petition as expeditiously as possible. It is relevant to notice some of the observations of the Hon'ble Supreme Court of India here-in-below:-

> "However, having regard to the submissions made by the learned counsel appearing on behalf of the Company that there was sufficient evidence on record, apart from the deposition of the parties concerned, to establish the Company's case with regard to the machinery, we deem it fit to set aside the decision of the High Court in so far as it pertains to the decree of Rs.8,50,000/- and remand the matter back to the learned Single Judge of the High Court for the purpose of re-determining the issue relating to the existence of the machinery, the value of the machinery and the de facto control and possession of the machinery subsequent to the arrangement. Needless to say if the evidence on record supports the Company's case, the Company will be entitled to a decree as has been directed by the earlier decision of the High Court which is set aside today.
>
> We make it clear that so far as the remaining directions of the Single Judge are concerned which have been affirmed by the Division Bench namely the reference of the amounts relating to the claims of the parties against each other to the determination of a Commissioner, we see no

ground to interfere. Appeals are disposed of accordingly. It is requested that the learned Single Judge may dispose of this CP No.35 of 1975 as expeditiously as is conveniently possible."

On account of the aforesaid remand order, this petition has been placed for de novo hearing in the light of the findings of the Hon'ble Apex Court.

Briefly stated the facts of the case as emerge from the record are noticed here under.

The petitioner-Company was engaged in Forest Leases, Saw Mills, Timber Trade and Merchants since the year 1944-45. It entered into a forest lease with the State of Jammu and Kashmir in the year 1961 and a lease deed dated 23.3.1961 came to be drawn and executed pursuant to sanction granted vide Government Order No.FST/214/61 of 1961 dated 4.3.1961, between the petitioner company and the State of Jammu and Kashmir for extraction of timber from Compartments No.39A, 39B, 40A, 40B, 40C, 40D and 41 of the Deodar, Kail in Siraj Range of the Doda Forest Division. The lease was for a period of seven years and was to expire on 15.12.1968. The lease was extendable upto March, 1970 for removal of the timber from the Forest Area. Under the terms of the lease, the Company was to start felling trees after these were made available to it. The quantity of timber for which right to convert, remove and dispose of, given to the Company was 23,00,566 Cft. Plus 465 poles and the total price/royalty stipulated under the agreement at Rs.48,60,000.00. The Forest Department was to hand over the trees after marking immediately on execution of the agreement. Quantity of

trees to be felled each year was to be decided by the Chief Conservator of Forest, Jammu and Kashmir (respondent no.2) in consultation with the Government of the State. The royalty/price was to be paid proportionately as per the details provided in the agreement (lease), subject to the directions of the Conservator of Forest, Circle Jammu (respondent no.3) or other Forest Officers. From the record, it appears that during the years 1962 to 1967-68 about 2,28,000 sleepers and scantlings of mixed species i.e. Deodar, Kail and Fir and of assorted and mixed sizes, were removed from the allotted compartments out of which over 55,000 sleepers and scantlings were lost in transit and only about 1,80,000 sleepers and scantlings including over 18,000 broken sleepers or scantlings were collected and brought to Jammu and marketed by the Company. Taking the provision of normal river losses in transit at 5% as estimated by the Forest Department, about 44,000 or 45,000 sleepers and scantlings was the conservative estimated quantity of timber lost to the Company due to flood action and drifting down of the timber to Pakistan in the absence of Booms which were to be provided by respondents no.1 to 3. In accordance with the provisions of the agreement which provides normal river losses in transit at 5%, the Forest Department remitted the transit loss of the timber at about 44000 or 45,000 sleepers and scantlings. Based upon aforesaid remit, royalty was paid to the Government by the Company.

The Company was unable to execute the lease due to various reasons including financial crisis with it. Accordingly, an arrangement was made between the Company, the State of Jammu and Kashmir and the Financial Institutions, namely, the United

Commercial Bank and Jammu & Kashmir State Financial Corporation and Hindustan Ropeways & Saw Mills Co. Pvt. Ltd. Under the arrangement arrived at between the Company, the State and financial institutions referred to above, respondents no.1 to 3 were to take over the control and supervision of the Company and were to carry out the working of the lease, operation and sales. The term of the lease was extended upto 15.12.1971. It is alleged by the Company that respondents no.1 to 3 took over complete control of the assets and properties of the Company including machinery and installations, stocks, stores, tools and implements worth Rs.10.00 lacs. The advances made by the United Commercial Bank were utilised by the Forest Department for operating the lease and other related activities. The sale of the timber was also conducted by the Forest Department. But no accounts were rendered to the petitioner-Company. It is further alleged that the timber was brought to the sale depots and sold off without information to the Company and large stocks of timber extracted from the Forest remained unaccounted. It is further alleged that respondent no.3 also utilised several lacs of rupees recovered out of the sale proceeds of the Company's timber stocks as also the advances made by the United Commercial Bank. After the expiry of the period of lease, the present Company Petition has been filed claiming damages allegedly suffered by the Company with the following details:-

(a) Losses caused to the Company due to flooding down and drifting down of timber to Pakistan in absence of Booms besides the interest thereon at 12% per annum amounting to	Rs.8,50,000 Rs.9,00,000
(b) Shortfall and losses of Sleepers and scants and on account of timber sold by respondents no.1 to 3 at throw away prices from January, 1969 after the Sales Hammer of the Company was illegally taken over by the Conservator of Forests till September, 1969 when the respondents no.1 to 3 undertook the working out of the Forests of the Company, besides interest thereon @ 12% per annum which works out to	Rs.3,00,000
(c) Value of timber lying at sales Depots and River side transit Depots and extracted timber lying in the forests or on route to the Saw-Mills etc. taken over by respondents no.1 to 3 at the time when the working out of the Forests was undertaken by respondents no.1 to 3 besides interest thereon at 12% per annum amounting to	Rs.5,00,000 Rs.3,30,000

(a) Losses caused to the Company due to flooding down and drifting down of timber to Pakistan in absence of Booms besides the interest thereon at 12% per annum amounting to	Rs.8,50,000 Rs.9,00,000
(d) The Machinery and installations Machinery stocks and stores and Tools and Implements etc. etc. taken over by respondents no.1 to 3 at the time when they undertook the working out of the Forests or in the alternative the estimated cost or value for replacement thereof and interest thereon at 12% per annum amount to	Rs.10,00,000 Rs.6,60,000
(e) Misc. Stocks and Stores of Food-grains and Foodstuffs and Forestry Hand tools and equipment etc., and interest thereon @ 12% per annum amount to	Rs.1,00,000 Rs.60,000
(F) Amount advanced by the United Commercial Bank and placed at the disposal of respondents no.1 to 3 besides interest thereon as chargeable or found due to the United Commercial Bank.	Rs.6,50,000 Rs.4,30,000

(a) Losses caused to the Company due to flooding down and drifting down of timber to Pakistan in absence of Booms besides the interest thereon at 12% per annum amounting to	Rs.8,50,000 Rs.9,00,000
(G) Estimated surplus of Sales over the costs of extraction and transportation etc., etc., on the timber taken over by the respondents no.1 to 3 (out of which the actual price or royalty or the proportionate cost of the timber found payable or due to the respondent no.1 has to be deducted) besides interest thereon @ 12% per annum on say Rs.44 lacs from 1969-70 for average say 3 years	Rs.64,00,000 Rs.15,84,000

The Company also pleaded for restoration of status quo ante and compensation for the damages caused to it since 1969. The Company also pleaded that since the arrangement was arrived at with the financial institutions i.e. New Bank of India, Jammu & Kashmir, State Financial Corporation, United Commercial Bank, it is not liable to pay any loan etc. to the financial institutions. In the alternative, the Company prayed that the dues of the financial institutions be recovered from respondents no.1 to 3 out of the decretal amount, as a result of the decree passed against respondents no.1 to 3. The Company has prayed for following relief in the petition:-

"a) that the claim of the petitioner Company in regard to the restoration of the Assets and the undertaking of the

Company be decreed and ordered in its favour and it be held that the Company is entitled to restoration of the status quo ante and to work out the operations of the Forests under the Agreement for the period for which it was being operated by respondents no.1 to 3 since January, 1969 and that the Company is also entitled to the grant of further reasonable extensions in the period of working out the forests under the Agreement, including such general or regular or special extensions that are or have been or generally may be given in any such cases. Furthermore, the Compensation, losses and damages found due to the Company on account of the defaults and Acts of mismanagement, misfeasance and misappropriation, omission and commission out of the claims detailed in para 13 of the petition and prayed for under prayer (b) below may be decreed and ordered against respondents in favour of the Company.

(b) that a payment of the claims of Rs.1,59, 95,000.00 detailed here under and as stated in para 13 above, may be decreed and ordered in favour of the petitioner Company against the respondents alongwith interest at 12% per annum till realisation:-

(i)	Losses caused to the Company due to flooding down and drifting down of timber to Pakistan in the absence of Booms together with interest thereon	17,50,000/-
(b)	Shortfall and losses of 11 to	5,25,000/-

12,000 Sleepers and Scantlings and on account of timber sold by respondents no.1 to 3 at throw away prices from January, 1969 after the Sales Hammer of the Company was illegally taken over till September, 1969 when the respondents no.1 to 3 undertook the working out of the Forests of the Company together with interest thereon.

(iii) Value of timber lying at sales Depots and River side transit Depots and extracted timber lying in the Forests as well as felled trees and converted logs lying in the forests or enroute to the Saw-Mills etc., taken over by respondents no.1 to 3 at the time when the working out of the forests was undertaken by respondents no.1 to 3 together with interest thereon. 8,30,000/-

(iv) The Machinery and installations, Machinery stocks and stores and Tools and Implements etc., etc. taken over by respondents no.1 to 3 at the time when they undertook the working out of the Forests or in the alternative the estimated cost or value for replacement together with interest thereon, 16,60,000/-

(v) Misc. Stocks and Stores of Food-grains and Foodstuffs and Forestry 1,66,000/-

Hand tools and equipment etc., together
with interest thereon

(vi) Amount advanced by the 10,80,000/-
United Commercial Bank and placed
at the disposal of respondents no.1
to 3 together with interest thereon.

(vii) Estimated surplus of Sales over 99,84,000/-
the costs of extraction and transportation
etc., etc., on the timber taken over by the
respondents no.1 to 3 (out of which the actual
price or royalty or the proportionate cost
of the timber found payable or due to
the respondent no.1 has to be deducted)
together with interest thereon calculated on
Rs.44 lacs for an averaged out period
of 3 years making provision for progressive
accruals since 1969.

Total Rs.1,59,95,000/-

viii) Besides the sum of Rs.1,59,95,000.00 (Rupees One Crore flfty nine lacs and ninety five thousand only) claimed and prayed for herein the petitioner Company may also be granted a decree against the respondents for the losses and damages of the Company arising due to non-fulfillment of obligations to third parties and the claim arising against the Company thereby on account of damages and interest etc.

(c) That in the alternative, in case this Hon'ble Court comes to conclusion that a novation took place of the agreement

between respondent no.1 and the Company for the sale of Timber as stated in para 20 above, the Assets and the Undertaking of the Company be ordered to be restored to it and/or this Hon'ble Court may be pleased to grant damages to the Company in respect thereof as prayed for under (b) above.

(d) That the respondents be directed to render true and proper accounts of their dealings since January, 1969 when they took over the Sale Hammer of the Company and subsequently undertook the working out of the Forests of the Company.

(e) That the Security deposited by the Company in the form of Cash Certificates of United Commercial Bank to the amount of Rs.35,000.00 (Rupees Thirty five thousand only) be ordered to be refunded to the Company together with interest thereon till the date of realisation.

(f) That the dues of respondent no.7, if anything is found due to it, may be ordered to be recovered on pro rata basis out of the surplus arising in the course of working out of the Siraj Forests Contract Undertaking of the Company or Alternatively on pro-rata basis out of the amounts decreed in favour of the Company (now in Liquidation) under prayer (b) (vii) in respect of its old dues and under prayer (b) (vi) in respect of the funds placed by it at the disposal of respondents no.1 to 3.

g) That the dues of respondent no.8, if any, may be ordered to be recovered on pro-rata basis out of the surplus arising in the course of working out of the Siraj Forests Undertaking of the Company or alternatively on pro rata basis out of the amount decreed in favour of the Company (now in liquidation) under prayer (b) (iv) above.

h) That the old dues of respondent no.9, may be ordered to be recovered on pro-rata basis out of the surplus arising in the course of working out of the Siraj Forests Undertaking of the Company or alternatively on pro-rata basis, out of the amount decreed in favour of the Company (now in liquidation) under prayer (b) (iii) above and other dues out of (b) (vii) and (viii) above; and in the meanwhile the Company Petition No.21 of 1974 be ordered to be adjourned sine die.

i) Such other and further relief as this Hon'ble Court may consider just and proper in the circumstances of the present case may also be granted in the interest of justice and fair play.

j) Costs of these proceedings may be ordered against the respondents."

Respondents no.1 to 3 in their common disclaimer while denying the allegations made in the petition raised certain preliminary objections, including in regard to the territorial jurisdiction of this Court. The respondent-State also raised the plea that the dispute is referable to arbitration and arbitration proceedings were earlier initiated by the Company and are pending before Former Chief Justice of High Court of Jammu and Kashmir where parties have already appeared and the proceedings are being conducted. On merits, the claim of the Company that it suffered losses is denied. The State also denied that the lease was worked out by the Forest Department on behalf of the Company. The State further pleaded that the Company was not in a position to work out the lease as it was having a meagre bank balance of Rs.4190.20 and to help it overcome the financial crisis, the Department arranged supply of

ration on credit and also paid to the Labourers out of the sale proceeds of the timber. Some of the creditors of the Company filed suits against the Company for recovery and the department paid Rs.68,000/- out of the sale proceeds to M/s Baldev Raj. The Forest Department never took over the tangible assets of the Company or any of the installed machinery, installation or machinery stocks, stores, tools and implements. It is, however, mentioned that after the termination of the lease of the Company, the felled or unfelled stocks of the timber were taken over by the respondents in accordance with the lease agreement. According to the State-respondent, the felled or unfelled timber lying within Coupe Area as on the date of the termination of the lease, vested in the Government under the terms and conditions of the agreement. All felled timber converted or otherwise lying outside the coupe boundary at the time of termination of the lease, credit whereof could be given to the Company, had been duly auctioned with the notice to the Company and maximum care and caution was taken to recover the maximum price thereof by open auction. It also pleaded that entire money recovered in this behalf has been duly credited and adjusted with the outstanding dues of the Company, with the State of Jammu and Kashmir. The State also stated that the lease was terminated vide Government Order No.FSD/55 dated 8.1.1972 and action has been taken under Sections 53 and 54 of the Jammu and Kashmir Forest Act read with Sections 90 and 91 of the Jammu and Kashmir Land Revenue Act.

Jammu and Kashmir State Financial Corporation-respondent no. 8 in the petition, while controverting the material allegations in the petition, denied arrangement or compromise

between the Company with the State of Jammu and Kashmir, Jammu & Kashmir State Financial Corporation and the financial institutions and stated that it was not a party to any such arrangement.

Reply of respondent no.7- United Commercial Bank, however, revealed that an additional loan of Rs.6.00 lacs was sanctioned by the Bank in favour of the Company. This amount was withdrawn by the Company through its Managing Director- Shri B.K.Kapoor or his authorised Operator by means of cheques and the same were transferred to the Account "Conservator of Forests, Chenab Circle, Jammu account Hindustan Forests company". The Bank also stated in the reply that the Bank was unwilling to entertain request for any further advance to the Company as there was no prospect of a possible rehabilitation of the Company so as to enable it to repay the loan. However, before the request of the Company could be declined, the Conservator of Forest Mr.P.N.Kaul intervened in view of the huge involvement of the Forest Department and negotiations started between the Company, the authorities of the United Commercial Bank and the Conservator of Forests. The Bank further stated that Jammu & Kashmir State Financial Corporation was also an interested party in view of its financial involvement with the Company and its Managing Director also associated himself with the negotiations at almost every vital stage. The Bank has also mentioned that the Conservator of Forest wanted financial assistance from the United Commercial Bank to enable the Company to carry out the working of the lease. But for the loan, the Company would have become defunct or completely crippled. The Company executed necessary bank documents and as

per the arrangement opened another account with the Jammu Branch of the Bank in the name and style of "Conservator of Forest, Chenab Circle, Jammu Account Hindustan Forests Company". The Bank's reply further revealed that all cheques were drawn by the Managing Director of the Company against the Company's Accounts and credited to the newly opened account Conservator of Forest Account Hindustan Forest Company for meeting the expenses of the working of the lease and this arrangement continued for a number of years.

Respondent no.9-Hindustan Ropeways & Saw Mills Co. Pvt. Ltd. fully supported the version of the petitioner-Company in its written statement.

On the basis of the pleadings of the parties, following issues were framed in the matter by learned Company Judge:-

(1) Whether the petition is barred because of the arbitration clause in the lease agreement dated 23rd March, 1961 or because of the arbitration proceedings initiated thereunder? OPD.

(2) Whether the petition is bad for misjoinder of parties? OPD.

(3) Whether the petitioner is entitled to the restitution and restoration of the assets and the undertakings of the Company in respondent's possession? OPP.

(4) In case Issue No.3 is not proved, whether the petitioner is entitled to a sum of Rs. one crore and twenty lakhs by way of compensation and damages? OPP.

(5) Whether any loss has been caused to the petitioner because of any wrong and illegal act or acts, mismanagement, and commission of the respondents? If so, to what extent? OPP.

(6) Whether the petitioner is entitled to the restoration of the right of lease for the unexpired period? OPP.

(7) Whether the respondents are liable to render accounts of the money received or released by them to the company and the Bank, respondent no.7? OPD.

(8) Whether respondents no.1 to 3 are liable to repay the loan received from the United Commercial Bank? OPP.

(9) Whether the lease has expired by efflux of time? OPD.

(10) Whether any new arrangement was entered into between the company and respondents no.2 and 3 on behalf of the State of J&K under which it was agreed that reasonable and necessary extensions for the working of the lease would be granted? OPP.

(11) Whether the State of J & K is entitled to claim a set off to the tune of Rs.60,82,457.02 alongwith up to date interest, towards the royalty due from the petitioner-company ? OPD.

(12) Whether the dues of respondents no.7 to 9 are repayable on pro rata basis out of the surplus arising in the course of working out of the Siraj Forests undertaking or lease or alternatively out of the amounts decreed in

favour of the petitioner-Company? OPP.

(13) Relief.

On November 16, 1979 with the consent of the parties, the following additional issue was framed:-

"Whether a Company which has been ordered to be wound up is bound by the arbitration clause?"

It has been revealed from the record that name of respondent no.9 i.e. the Hindustan Ropeways & Saw Mills Co. Pvt. Limited, was deleted by the Company Judge from the array of the parties by order dated December 12, 1986. This order was assailed by respondent no.9 in Company Appeal No.39 of 1986 before Division Bench of this Court. Said appeal was allowed by an order dated 27.9.1988. On the basis of a joint memo filed by respondent no.9, 7th respondent (United Commercial Bank) as also the 8th respondent (Jammu and Kashmir State Financial Corporation), the contesting parties in the aforesaid appeal, agreed as under:-

"1) The evidence recorded in CP No.35 of 1975 shall be treated as evidence in CP No.48 of 1981 and vice-versa so that the entire evidence will be common consolidated evidence in respect of both the petitions.

(2) The documentary evidence in both the petitions shall be treated as evidence proved in respect of both execution and in respect of contents of documents executed by the Company and guarantors in favour of the Bank.

(3) All the parties in both the petitions shall be treated as having closed their evidence in both the petitions."

In view of the above agreement, entire evidence recorded in CP No.35 of 1975 and CP No.48 of 1981 is to be read in both the petitions.

Learned Single Judge of this Court in its judgment dated 27.2.1990 returned findings in favour of the Company on issues no.1, 2, 7 and 8 and issues no.3, 4, 5, 11 and 12. However issues no.6, 9 and 10 were decided against the Company and in favour of the respondents.

The learned Single Judge passed following concluding order vide its judgment dated 27.2.1990:-

> "Respondent no.1 and its officers, who were dealing with the affairs of the lease and respondent no.3, are the accounting parties. They have to render the accounts for the period during which they worked out the lease till its termination. The respondents did not lead any evidence in rebuttal and this court is feeling handicapped to assess the actual losses incurred by the Company for want of evidence. Under these circumstances, I am left with no other alternative but to appoint a Local Commissioner to (i) assess the actual value of the timber felled, unfelled, stacked in transit and in depots after the lease was taken over by respondent no.1. (ii) ascertain the costs incurred by respondent no.1 in executing the lease (iii) assess the total amount due

to respondent no.1 towards the unpaid instalments of lease money/royalty, (iv) assess the actual damages suffered by the Company after the lease was taken over by respondent no.1 on account of sale of timber at a price lower than the market price and also to ascertain what was the market price of the timber on the date of the sale (v) assess the dues if any, payable to respondents no.8 and 9 arising in the course of working of the Shiraj Forest Lease or other liabilities of the Company. I appoint Shri Ujjagar Singh, a retired Judge of this Court as a Local Commissioner to examine the accounts and submit his report on the above points. On receipt of the report, the appropriate orders will be passed. He will have the assistance of Shri K.B. Sood, Chartered Accountant, SCO 265, Sector 35-D, Chandigarh in executing the commission. The commission's fee is tentatively assessed at Rs.30,000/- for the Local Commissioner and Rs.10,000/- for the Chartered Accountant. Final fee will be assessed after receipt of the report of the Local Commissioner. The remuneration fixed for the Local Commissioner and the Chartered Accountant in the first instance will be paid by the Company.

For the reasons above, I pass a decree for recovery of Rs.8,50,000/- (Rupees Eight Lakhs fifty thousand only) with interest 12% per annum from the date

when the machinery of the Company was appropriated by respondent no.1. The machinery was not returned by respondent no.1 after the lease stood terminated by afflux of time i.e. December 15, 1971. The Company will be entitled to recover this amount with interest w.e.f. December 16, 1971 till its realization. I further pass decree in favour of the Company for rendition of accounts by respondents no.1 to 3. Parties are left to bear their own costs."

Five appeals came to be preferred against the aforesaid judgment before a Division Bench of this Court. Company Appeals No. 40 & 41 of 1990 filed by respondents no.1 to 3 in the Company Petition No. 35 of 1975, whereas Company Appeal No. 38 of 1990 was filed by Jammu & Kashmir State Financial Corporation i.e. Respondent No.8. Company Appeal Nos.26 and 31 of 1990 were filed by United Commercial Bank. These Company Appeals came to be disposed of by an Hon'ble Division Bench of this Court vide judgment dated 20.3.1996.

The judgment of the Hon'ble Division Bench was further appealed by the State of Jammu and Kashmir in Civil Appeal Nos.4413 of 1997 and 4416-17 of 1997 before the Hon'ble Supreme Court.

Hon'ble Supreme Court vide its judgment dated 22.9.2004 set aside the decree passed by the learned Single Judge and affirmed by the Hon'ble Division Bench in so far as it relates to

recovery of Rs.8.50 lacs on account of the costs of the machinery and remanded the case for determining the issue relating to the existence of the machinery, the value of the machinery and the de facto control and possession of the machinery. It may be useful to refer to the relevant observations of the Hon'ble Supreme Court: -

> "We deem it fit to set aside the decision of the High Court in so far as it pertains to the decree of Rs.8,50,000/- and remand the matter back to the learned single judge of the High Court for the purpose of re-determining the issue relating to the existence of the machinery, the value of the machinery and the de facto control and possession of the machinery subsequent to the arrangement....."

Hon'ble Supreme Court, however, maintained the findings and directions of the learned Single Judge of this Court relating to the rendition of accounts and settlement of the accounts by the Commissioner vide its judgment dated 27.2.1990.

It is in view of the above referred directions of the Hon'ble Supreme Court that the claim of the petitioners and respective contentions of the parties are to be considered. Primarily, following two questions are required to be considered by this Court:-

> (1) "Whether the petitioner-Company is entitled to any claim for the machinery alleged to be handed over to respondents no.1 to 3 and was under their control and possession and the same has not been returned. If so,

the value thereof?

(2) To what amount, the petitioner is entitled to on the basis of rendition/settlement of accounts, in view of the report and findings of the Court Commissioner (Justice Ujjagar Singh), if the report is to be accepted?"

Both the sides have addressed arguments for and against the findings recorded by Court Commissioner regarding the rendition of accounts and also relating to existence and valuation of the machinery.

Question No.1.

With a view to examine question No.1 regarding the claim of the petitioner-company for the machinery, I have examined the pleadings of the parties, documents on record and the evidence led by the parties in this regard. It may be useful to refer to the same.

In paragraph 12 of the company petition, the petitioner-company specifically mentioned that respondent Nos. 1 to 3 took over the complete control over the assets including machinery and installations, machinery stocks and stores, tools and implements worth over rupees ten lacs at the market value. The company made following claim in respect to machinery etc.

The machinery and Installations, Machinery stocks and Stores and Tools and Implements etc. etc. taken over by respondents No.1 to 3 at the time when they undertook the working out of the Forests or in the alternative the estimated cost or value for replacement thereof and interest thereon at 12% per annum amounting to	Rs.10,00,000 Rs.6,60,000

Further in paragraph 16 of the company petition, again

specific averment has been made “that respondent Nos. 1 to 3 took over the control and management and possession of stocks and stores of all kinds of installations and installed machinery.”

In paragraph 17 of the company petition, the petitioner company has mentioned about the company's scheme for mechanisation of Forestry operations and acquisition of machinery. A loan of Rs.3,10,000/- was secured from the Jammu & Kashmir State Financial Corporation against the mortgage of Saw Mills, machinery and installations of the company in the Forests. A further averment is made that respondent Nos.1 to 3 took possession of machinery estimated value of which is Rs.10 lacs. It is further mentioned that till date, respondent Nos. 1 to 3 have neither returned the machinery and installations etc. nor the price of the same had been paid to the company.

In respect to the above averments of the company, the State in its reply to the company petition particularly in paragraph 12 thereof simply stated that the firm managed to get a loan from the Jammu & Kashmir State Financial Corporation. Against this loan, they mortgaged the equipment which they had installed in the forest. The Department never agreed to act as Attorney so far as their equipment is concerned and they have written time and again to make their own arrangements for watch and ward.

In paragraph 13 it is further mentioned that it is wrong that the operation and control over the assets of the company were taken by the Forest Department. It is denied that respondent Nos. 1 to 3 or any other officer of the Forest Department took over any tangible assets of the petitioner-company or any of the installation,

installed machinery, stocks, stores, tools, implements etc. at any time whatsoever. Similarly in paragraph 17 of the reply, it is stated that "it is denied that respondent Nos. 1 to 3 took the possession of all the installed machinery. The machinery was never in possession of the department."

Jammu & Kashmir State Financial Corporation-respondent No.8, filed its separate reply to the company petition. In paragraph 12 of the reply on merits, the averments made in the company petition regarding loan against the mortgage of plant and machinery of the petitioner-company, have been admitted by stating that "the answering respondent has financed the petitioner-company to the extent of Rs.2.95 lacs to provide it with working capital for running the forest industry which is fully secured by the mortgage of machinery and plant of the petitioner company collaterally secured by the mortgage of house and immovable property".

In support of the claim of the petitioner-company, the Director of the Company, Shri Balwant Krishan Kapoor, appeared as a witness as PW-3. His statement was recorded on 07.08.1980 onwards. In his statement he has again given the details of the machinery (pages 81 to 87-from Item Nos. A to H). He has further made a statement that when Forest Department took over the lease under the arrangement, Rs.8.50,000/- was the value put by them for the machinery. He further stated that the present cost of the machinery is about Rs.15/16 lacs. He has further stated that no account of machinery has been rendered to him and the Forest Department has taken the possession of the entire machinery. On

08.08.1980 when his statement was continued (at page 95) he has further made a statement that the machinery taken by the Forest Department was mortgaged with the Jammu & Kashmir State Financial Corporation. The Corporation had authorized by giving a General Power of Attorney in favour of the Divisional Forest Officer to use the machinery. This witness was subjected to cross-examination at length. From the cross-examination, it appears that no question whatsoever was asked regarding the valuation of the machinery put forth by the witness. He was further cross examined regarding machinery. The question put to the witness and his answer are as follows:-

> " Question: I put it to you that it was your own innovation to work the lease by mechanised method and that the Government never asked you to resort to that method?
>
> Answer: No. It was on my proposal that the Chief Conservator of Forests had agreed that the lease be worked through mechanised method."

Again during cross-examination this witness stated that it was for the first time in 1962 that the petitioner-company had to import machinery when the petitioner-company thought of taking loan from the United Commercial Bank. The said Bank gave company Cash Credit Limit and Letter of Credit limit upto Rs.5 lacs.

Apart from the above evidence, the petitioner-company has also relied upon various documents on the question relating to machinery.

Documents Exhibit PW-2/4 (in file No.1 containing Exhibits at page 62) is a letter from the Conservator of Forests, Chenab Circle, Jammu, to the Chief Conservator of Forests, Jammu & Kashmir Government, Jammu. The author of the letter after visiting the lease area of the petitioner company referred to various aspects of the lease including machinery and proposal of the United Commercial Bank for taking over control of the lease by the department. In respect to the machinery, it is mentioned as under:-

> "The lessee took to mechanisation of operations. It took some time in installation and working of the Cable Cranes and the Saw mills. In the meantime the work remained at a standstill. Had the Lessee resorted to conventional methods of working in the interval he took to fit the mechanisation equipment, he would not have landed himself in any financial difficulties to start with."

Regarding the control of the department on the working of the lease following is mentioned in Exhibit PW-2/4 **:-**

> **"The United Commercial Bank Ltd. has, however, come up with a proposal to finance the lease to make it run smoothly so that besides the royalty that the deptt. may get, the Bank and the other creditors also are in a position to recover their dues. An interim reply to the Bank has already been sent, copy of which stands submitted to you as well, vide this office No.5278-81/C.VII. dated 11/13-3-1969.**
>
> **There are two alternatives left with the deptt. to solve this difficult lease:-**
>
> **(i) That we take recourse to clause 14 of the agreement, quash**

the lease and re-sell it;

(ii) that the proposal of the United Commercial Bank is agreed to and the lease is worked out satisfactorily with the Finance provided by the Bank under clause supervision and the control of the Deptt.

So far as No.(ii) is concerned, it would be advantageous to the Deptt. as well as to the J&K State Financial Corp. and others, if a trial to this scheme is given for at least one year so that we may be able to see how the scheme works. I have a feeling that if the operations are controlled adequately, the scheme is bound to succeed and regenerate itself for future working."

Exhibit P-32 (at page 261, file No.5 containing Exhibits) is a DO letter dated 11.10.1969 from the office of PN Kaul, Conservator of Forests, Chenab Circle, Jammu to Shri RC Mehta, Regional Manager, United Commercial Bank, Chandigarh. The relevant extract of the document relating to machinery reads as under:-

"The work of renovation and repairs to the machinery and installations has also been taken in hand with a view to doing some sawing now and to be ready to start operations in full swing at the commencement of the next working season in February/March, 1970. You will recall my mentioning at the meeting that I may require an additional sum of Rs.50,000/- during this working season apart from the Rs.1 lakh already provided. Inclusive of these amounts it will be necessary to provide funds upto the agreed limit of Rs.6 lakhs for the

working of the lease as a whole and I trust you will take such steps as are necessary at your end so that there may be no delay in placing funds at my disposal as and when required."

A copy of this letter was also endorsed to Shri BK Kapoor, Director of the petitioner-company, for information.

In response to the aforesaid DO letter, the United Commercial Bank Limited wrote to PN Kaul, Conservator of Forests, Chenab Circle, Jammu, vide its letter dated 31.1.1970 (Exhibit P-33 file No.5 at page 263) about the willingness of the Bank to provide finance for working of the lease. The relevant averments are reproduced as follows:-

"With reference to the discussions held by our Regional Manager and the undersigned alongwith Shri B.K. Kapur with you and your Divisional Forest Officer Mr. Abrol on January 29, 1970, you were pleased to advise us of the working possibilities of the Siraj Lease of the Hindustan Forests Co. (P) Limited.

XX XX XX

Please let us have your confirmation and comments with regard to the above and also advise us the amount inclusive of Rs.1,00,000/- already placed at your disposal that would be required for working out the lease in a satisfactory manner during the current year to enable us to proceed further in the matter. The sale proceeds of Timber in transit month-wise being expected may also kindly be advised."

Exhibit P-34 (at page 267, file No.5 containing Exhibits) is again a letter dated 04.02.1970 from PN Kaul, Conservator of Forests, Chenab Circle, Jammu, to the Manager, United Commercial Bank, Jammu, regarding working of the lease and the expenses incurred by the department from the loan advanced by the Bank to the petitioner-company. The relevant extract is reproduced as under:-

"3. Rs.1 Lac already advanced by you has been invested more or less as under:-

(i)	**New Felling, logging and extraction work etc.**	**Rs.60,000/-**
(ii)	Renovation of machinery etc.	Rs.4,000/-
(iii)	Floating operations of current float	Rs.35,000/-

4. Rs.50,000/- now provided is to be utilized for:-

(i)	**Floating etc. and transport upto Jammu**	**Rs.25,000/-**
(ii)	Diesel engine Advance and renovation of machinery etc.	Rs.10,000/-
(iii)	Advance for mechanical working and mechanical sawing	Rs.20,000/-

5. In the current working season, an amount of Rs.6 Lacs (inclusive of Rs.1 Lac already provided) will be required for this purpose and it should be made available at the earliest so that necessary arrangement of machinery, mechanical working, labour and foodgrains, is made right now. The total funds required for extraction, floating and transport upto Jammu of 80,000 to 1 Lac scants, say 250,000 Cfts. @ Rs.3/25 per Cft. will be about Rs.8 Lacs.

Sd/-
Conservator of Forests,Chenab Circle,
Jammu."

Exhibit P-31 (page No.64 of exhibits pertaining to CP No.48 of 1981) is an agreement deed executed between B.K. Kapoor, Managing

Director of the petitioner company and the United Commercial Bank regarding creation of mortgage of the assets of the petitioner-company etc. The relevant extract of the document where reference is made to the machinery, is quoted hereunder:-

> "Whereas the mortgagors own the some immovable property and machinery, which they have constructed and installed in the Siraj Range Doda Forest Division hereinafter called the mortgaged property and is mortgaged with the Jammu & Kashmir State Financial Corporation hereinafter called the corporation vide mortgage deed dated 7.12.64 registered on 1.4.65 and whereas the Bank desires that the mortgagors should create a second charge by way of mortgage on the said machinery.
>
> XX XX XX
>
> 1. That the mortgagors have already mortgaged the machinery, short particulars of which are given in the schedule, given hereunder, with the corporation vide mortgage deed dated 7.12.64 to secure the loan taken from the Corporation."

This agreement deed also contains schedule of machinery charged under the deed which is as under:-

> "Schedule of machinery charged.
>
> I. XX XX XX
>
> **II. Saw mill No.1 located at Gorkhan-Chandrabatan village in compartment 41 consisting**

of:-

1. Ursus-50 H.P. Diesel Engine Tractor.

2. Log Band mill complete with 48" X 4" face vertical band headrig, Meadows type saw mill, carriage and track etc. with belt friction, feed, log turners and complete with necessary fast and loose driving pullys, counte-shaft conveyor rolls etc. etc.

3. Band resaw mill complete with 36" dia by 3" face headrig and table necessary fast and loose pulleys conveyors rolls etc. etc.

4. Counter shaft with necessary driving pulleys and belts etc.

5. 110 Volts of kilowatt electric dynoma for Electric lighting together with necessary wiring and Electric bulbs etc.

6. Akimoku automatic badsaw sharepening machine, saw swagers and miscellaneous saw servicing and sharpening equipment.

7. Equipment for pendulum cutt-off saw with necessary pulleys etc.

8. Auxiliary 12 H.P. Diesel engine bernard.

9. Hand drill servicing tools and spare parts including spare saw pulleys and headrigs etc.

10. Wright power blade saw for log cutting etc.

All installed under temporary sheds and/or lying stored or in use at site.

11. Donald Ropeway spans from Chandrabatan upto floating stream consisting of three track cables 3/8" and control cable 1/4" dia, complete with Anchors sheaves operating drum and station with brakes and carriages etc.

III Saw mill No.II located at Bhatra-Chandrabatan village in compartment 38 consisting of:-

1. Pelton turbine complete with 300 Rft 10" dia Penstock check valve and about 2 miles of water channel and water tank upto top of penstock.

2. Log band mill complete with 48"X 4" face vertical band Headrig, Meadows type saw mill carriage and track etc. with Belt friction feed log turners and complete with necessary fast and loose driving pulleys counter shaft conveyor rolls etc. etc.

3. Band resaw mill complete with 36" dia by 3" face Headring and table, necessary fast and loose driving pulleys conveyors rolls etc. etc.

4. Counter shaft with necessary driving Pulleys and belts etc.

5. 110 volts 2 kilowatt electric dynoma for electric lighting together with necessary wiring and electric bulbs etc.

6. Akimoku type automatic bandsaw sharepening machinery, saw swagers and miscellaneous saw servicing and sharepening equipment.

7. Equipment for pendulum cut off saw with

necessary pulleys etc.

8. Auxiliary 12 H.P. diesel engine bernard.

9. Hand drill servicing tools and spare parts including spare saw pulleys and headrigs etc.

10. 100 Rft spare 10" dia Penstock for Pelton turbine.

11. Spare pelton Turbine complete with 8" dia.

All installed under temporary sheds and/or lying stored or in use at site.

IV. Saw mill No.III located at Khudal near Chandrabatan village in compartment 40 consisting of:-

1. WSW 324 Plish make 75 H.P. imported Diesel engine.

2. Meadows U.S.A. make circular saw mill with saw mill carriage and track and belt friction feed, log turners and complete with necessary driving pulleys counter shaft, comonveyors rolls etc.

3. Horizontal logs bad mill with 36" dia by 3" saw pulleys carriage and feeds etc.

4. Band resaw mill complete with 36" dia by 3" face headrig and table necessary fast and loose driving pulleys, conveyor rolls etc. etc.

5. Counter shaft with necessary driving pulley and belt etc.

6. 110 volts 2 kilowatt electric dynamo for electric lighting together with necessary wiring and electric bulbs

etc.

7. Akimoku type automatic bandsaw sharepending machine saw swagers and miscellaneous saw servicing and sharpending equipment.

8. Manual saw sharpening machine for circular saws saw swagersa and miscellaneous saw servicing and sharepening equipment.

9. Hand drill servicing tools and spare parts including spare saw pulleys and headrigs etc.

All installed under temporary sheds and/or lying stored ore in use at site.

V. Hinteregger cable crane installations presently installed at chandrabatan/gorkhan including:-

1. Cable crane winch type 650/3000 completed with Kirloskar RA3 Air Cooled diesel engine.

2. Hinteregger cable crane carriage type D2together with 2 stop devices (upper and lower).

3. 7/8" (23 mm) dia) Bethlemhem trace rope alongwith necessary cable connectors Anchors tension cable track rope shoes and supports etc. etc.

4. 3/8" (10 mm) dia, Bethlehem haulting rope with necessary pulleys and supports.

5. 3 sets field telephone equipment and necessary telephone cable and loud ringing bell etc.

VI. Hinteregger (bi-cable_ cableway under installation between compartment 39 and the site of

saw mill No.II, consisting of:-

1. Hinteregger cableway winch type complete with kirlosker RA3 Air cooled Diesel engine.
2. Hauling rope turn table sheave anchors and loading station.
3. Cable carriages.
4. 7/8" (23 mm) dia. Bethlehem track ropes alongwith cable alongwith cable connections.
5. 3/8" (10 mm) dia bethlehem hauling rope with necessary Pulleys and supports.
6. 4 sets Telephone equipment & necessary telephone cable and loud ringing bell etc."

In response to this overwhelming documentary and oral evidence, the State of Jammu and Kashmir led no evidence to rebut the pleadings, oral and documentary evidence except denying the factum of taking over the possession of the machinery from the petitioner-company. The stand of the State-respondents is, however, belied from the facts on record. The existence of machinery, its installation in forest and mortgage with the Jammu & Kashmir State Financial Corporation as also mortgage with the United Commercial Bank as a second charge, is not denied. Exhibits P-31, P-32, P-33 and P-34 contain abundance of evidence in this regard. DO letter of PN Kaul, Conservator of Forest to the United Commercial Bank is an indicator that the entire forest working was taken over by the forest department under a mutual agreement between the petitioner company, the forest department, Jammu & Kashmir State

Financial Corporation and the United Commercial Bank as alleged in the company petition. A bare denial in the reply is not enough to outweigh the documentary and oral evidence led by the petitioner company in support of the factum of existence of the machinery installed in forest area which has been utilized by the State to workout the lease after aforesaid arrangement. It has also been established that even though control of the forest lease awarded to the petitioner company was taken over by the forest department, however, the entire finance was provided by the petitioner company through loans from the United Commercial Bank, Jammu & Kashmir State Financial Corporation and the sale proceeds of the timber extracted from the forest under the lease granted to the petitioner-company. When the State-respondents filed the Company Appeal against the original judgment of this Court being Company Appeal No.41 of 1990, one of the grounds of challenge to the judgment of the learned Single Judge was the alternative plea for return of the machinery. The Hon'ble Division Bench of this Court was impressed by this contention and while dismissing the appeal of the State-respondents on other counts, judgment of the learned Single Judge was modified with the following observations:-

> "There is some substance in the last contention of the learned counsel for the appellant and that is with regard to the decree passed by the learned Company Judge in favour of the petitioner company for an amount of Rs.8,50,000/- with interest @ 12% per annum from the date when the machinery of the company was appropriated by respondent No.1 by holding that the machinery was not returned by the State after the lease

stood terminated by afflux of time i.e. December 15, 1971.

XX XX XX

It is to that extent only that the appeal of State of Jammu and Kashmir shall stand allowed.

No arguments at all have been addressed in support of the cross-objections filed vide C.M. No.31 of 1991 in Company Appeal No.41 of 1990 challenging a part of the order passed by the learned Company Judge in Company Petition No.35 of 1975.

In view of the discussions made above, Company Appeal No.41 of 1990 arising out of C.P. No.35 of 1975 is dismissed with the modification as detailed above. Company Appeal preferred by the Financial Corporation, bearing No.38 of 1990 against the directions issued by the learned Company Judge is allowed in the manner fully indicated above. The appeal of the bank bearing No.26 of 1990 is allowed in the manner indicated above. The decision in appeals mentioned above would also cover the decision of appeal Nos.31 and 40 of 1990. In view of the peculiar facts and circumstances of these cases, the parties are left to bear their own costs."

In SLP, Hon'ble the Supreme Court, however, set aside the judgment of the Hon'ble Division Bench of this Court as also the judgment of the learned Single Judge and remand the case to determine the existence

of the machinery and valuation thereof. Thus, impliedly the judgment of the Hon'ble Division Bench of this Court to this extent is over-ruled. Otherwise also, after such a long time, it may not be possible to direct the State-respondents to retrieve the machinery and hand over the same to the petitioner-company because machinery might have lost its utility and value particularly when it has been used for working out the lease. The claim of the petitioner is, thus, to be considered only as regards the value of the machinery is concerned.

The petitioner-company has valued the cost of the machinery at Rs.10 lacs at the time of the filing of the claim, though during his statement the Director of the Company, BK Kapoor, valued the machinery at Rs.15/16 lacs. The petitioner-company has also claimed interest of Rs.6,60,000/-. The details of the machinery is contained in Exhibit P-31 as also in the statement of PW-3, BK Kapoor who is the Director of the petitioner-company. These documents have not been disputed at any stage. I am convinced that the petitioner company has been able to establish the existence of the machinery and its installation in forest department. It is also established that the machinery was utilized for working out the lease which is indicated in the letter of PN Kaul, referred to above, where the repair of the machinery has also been accounted for against the loan advanced by the United Commercial Bank.

Now the related issue is the value of the machinery. The petitioner has assessed the value at Rs.10 lacs and claimed interest thereon at the rate of 12% per annum which is calculated at Rs.6,60,000/-.

Keeping in view the details of the machinery, its valuation does not seem to be an exaggeration, however, I assess the value of the

machinery at Rs.8,50,000/- which was earlier assessed by this Court. The petitioner company shall also be entitled to interest on the amount aforesaid at the rate of 12% per annum which was prevalent bank rate at the relevant time. Interest shall become payable from the date of lodging of the claim before this Court i.e. the date of filing of the company petition till the amount is actually paid .

Question No.1 is, thus, answered accordingly.

Question No.2.

When this company petition was decided vide judgment dated 27.02.1990, this Court appointed Local Commissioner for rendition of accounts. During the pendency of the appeal before the Hon'ble Division Bench, the Commission (Justice Ujjagar Singh, Retd.), submitted his report dated 27.02.1993 for rendition of accounts. The terms of the reference, as per the judgment of the learned Single Judge, were as under:-

> " (i) Assess the actual value of the timber felled, unfelled, stacked in transit and in depots after the lease was taken over by the Respondent No.1.
>
> (ii) Ascertain the costs incurred by Respondent No.1 in executing the lease.
>
> (iii) Assess the total amount due to respondent No.1 towards the unpaid instalments of lease money/royalty.
>
> (iv) Assess the actual damages suffered by the Company after the lease was taken over by the Respondent No.1 on account of sale of timber at a price lower than the market price and also to ascertain what was the market price of the timber on the date of the sale;

and

(v) Assess the dues, if any, payable to Respondents No.8 and 9 arising in the course of work Sheraj, Forests Lease or other liabilities of the Company."

The petitioner company filed its statement of claim dated 26.05.1990 before the Local Commission at Chandigarh, containing the following claims:-

" (1) Stocks of timber taken over by Forests Department in 1969 under the Arrangement as admittedly being available	Deodar: 4 lac Cft. Kail: 3 Lac Cft. Fir: 6 lac Cft.

Please refer: (i) Ex. P-33 or the identical PW.2/19 at pages 263 and 119 respectively, and, (ii) Ex.P.34 at page 267.

(2) The value of the above stocks of timber as on 1969-70 at rates given in Ex.P 33 or the identical Ex.P.W.2/19 (pages 263 and 119) and confirmed in Ex.P. 34 (page 267).	Rs.1,27,00,000/- the rates being: Deodar: Rs.14/= per Cft. Kail :Rs.11/- per Cft. Fir :Rs.9/- per Cft.

Above rates are further confirmed to be correct market rates by reference to Ex.P.W. 4/2 (page 122 of file No.1) being the average wholesale prices of timber at Jammu centre as certified by the Divisional Forest Officer."

The value of the petitioner company's assets as on the expiry of lease by afflux of time on 15.12.1971 is as under:-

"Deodar	:	4 Lac Cft.	x17/80	=Rs.71,20,000/-
Kail	:	3 Lac Cft.	x12/85	=Rs.38,55,000/-
Fir	:	6 Lac Cft.	x10/65	=Rs.63,90,000/-
			Total carried over:	Rs.1,73,65,000/-.

II. Value of 20,000 Scants/Hakries admitted by the Conservator of Forests to UCO Bank as per Ex. P.34 at page 267. : Rs.4,50,000/-

III Value of the timber taken over by the Forests Deptt. during the period January,1969 to Sept. 1969 (11,000 Scants.)	Rs.2,47,500/-.
Hence total claim is :	Rs.1,80,62,500/-
MINUS: Balance Sale consideration payable to the State Govt. out of Rs.48,60,000/- deducting Rs.16,77,343/- :	Rs.31,82,657/-
Net claim of the petitioner-company is:	Rs.1,48,79,843/-

Interest at the rate of 12% per annum with effect from 16.12.1971 is also claimed.

The State-respondents projected its claim of royalty, sinking funds and interest thereon, which are as under:-

"Royalty outstanding as on Jan. 72	:	Rs.39,55,816.20
Interest upto 6/9	:	Rs.68,48,577.55
Balance sinking Fund due as per Cl.2 (Note V) of the agreement	:	Rs.39,972.00
Royalty outstanding of sister concern Gulabgarh lease	:	Rs.5, 53,965.81
Interest from 4/72 to 6/9	:	Rs.9,09,888.43
Total	:	Rs.1,23,08,219.99

The department also pleaded that respondent No.1 or any of its functionaries never took over the lease of the petitioner company or even inflicted any loss to the company by sale of timber price lower than the market price. It, however, admitted the stock position as existed in 1969 which is as under (page 10 of the Commissioner's report) :-

"A.	Standing	Volume	Within the coupe boundary.

Deodar	1,21,077 Cfs.
Kail	1,86,622 Cfs.
Fir	8,52.015 Cfs.

B. Volume of felled but unconverted lying within the coupe:

Deodar	3,020	Cfs.
Kail	1,062	Cfs.
Fir	6,000	Cfs.

C. Volume of timber in log form lying within the coupe:

Deodar	11,250	Cfs.
Kail	1,500	Cfs.
Fir	9,600	Cfs.

D. Volume of timber in sawn form lying outside the coupe at launching ghat in the forest and at Jammu Depot:

Deodar	81,247.07	Cfs.
Kail	1,22,646.29	Cfs.
Fir	1,35,725	Cfs.”

The value of the timber was, however, assessed at Rs.48,26,638.00/-. It was also claimed that stocks of the petitioner company after last extension in 1972 lying standing and felled inside the coupe could not be removed as no party was prepared to invest money to remove the small quantity. The parties led their evidence documentary or otherwise. The Commission, on consideration of the entire material produced before him, documentary or otherwise, rendered the final findings which are as under:-

> “1. The Company Petitioner is entitled to recover an amount of Rs.14,05,192.80P from Respondent Nos.1 to 3 with interest at the rate of Rs.12% per annum from 1.4.1973 till realisation.

2. As the claim of Respondent No.9 Hindustan Ropeways and Saw Mills (Pvt.) Limited has been admitted by the Company Petitioner the amount claimed is directed to be given by Company Petitioner with interest at the rate of 12% per annum from the date of the amount become due till realisation of the amount found due to the Company Petitioner.

3. it is not found to be necessary to find out if any thing is due to Respondent No.9.

4. The claimants mentioned at Pages 1193-1295 of the file and referred to at pages 60-63 thereof it would be for Company Judge to decide as to what amount is to be paid by the Company (Petitioner) to them. However, (Company) Petitioner is liable to pay to these whose claims are admitted as shown at pages 44-47 with interest at the rate of Rs.12% per annum with effect from the date when it became due till realisation.

5. Costs of the Commissioner and the Chartered Accountant are to be borne by the Company Petitioner are to be borne by the Company Petitioner on the one hand and Respondent Nos. 1 to 3 on the other to the extent of one half each."

The Commission also observed that respondent Nos.7 and 8 did not file any claim before the Commission, whereas respondent No.9, though lodged claim, but without any documents. It has, however, been observed

by the Commission that the claim of respondent No.9 was admitted by the petitioner company. Hence, a direction was issued to pay the claim of respondent No.9 on the basis of admission of the petitioner-company. Claims of respondent Nos.7 and 8, however, were rejected having not been filed before the Commission.

The State-respondents as also the petitioner-company filed their respective objections to the report of the Local Commission. Objections raised by the State of Jammu and Kashmir can be summarized as follows:-

(i) The Commission failed to assess the exact amount of the unpaid instalments of the lease money/royalty which the company owed to the objector-respondents.

(ii) The Commission could not pin point the exact date as to when the objector-respondents took over the lease. It is further stated that the actually the petitioner company itself was executing the lease.

(iii) That the report of the Commission is based upon presumptions, suppositions and not on concrete evidence.

(iv) It was also pleaded by the State-respondents that following quantity of timber (At page 55 of CA No.323/1993) was available at the time of the expiry of the lease:-

(i)	**Total Timber in the forest including standing, felled and converted.**	**11,46,303 Cft.**
(ii)	Transported i.e. Floated	4,75,034 Cft.
(iii)	Lying outside coupe after 1972 and sold to M/s. Trehan enterprises	68,477 Cft.
(iv)	Balance in the forest.	6,02,792 Cft.
(v)	Actual value of balance received @ 7.75 per Cft. as per average market rate of 1969-70	46,71,638 Cft.

It is further pleaded that only 3,17,183 cft. Stocks arrived at

Jammu out of 4,75,034 Cft. and Mahaned and transported and the stocks were sold by the petitioner company itself at the rates negotiated and agreed to by BK Kapoor, Director of the petitioner company. The State-respondents also raised its own claims (at Page 9 of CA No.323/93) in the following manner:-

(a)	***Royalty outstanding as on January, 1972***	***Rs.39,55,816-20 P***
(b)	Interest upto June, 1990	Rs.68,48,577-55P
(c)	Balance sinking fund due as per clause 2 (Note v) of the agreement.	Rs.39,972.00
(d)	Royalty outstanding of the sister concern i.e. Gulabgarh lease of Comptt. 25,28,29 of Reasi Division coupe 1961 as on 31.3.1972,	Rs. 5,53,965-81
(e)	Interest w.e.f. April, 1972 to June, 1990	Rs.9,09,8880.43
	Total	Rs.1,23,08,219-99

The petitioner company also objected to the report of the Local Commission, primarily, on the assessment of quantity of timber, valuation thereof and determination of the claim of the petitioner company. Objections of the petitioner company can be summarized as under:-

(i) That the Local Commissioner has mis-applied the note of Clause 8 of the agreement between the parties and reduced the quantity of timber in the proportion of 50, 40, 30 Cfts. with respect to Deodar, Kail and Fir. The petitioner company claimed the following quantity and amount in respect of the timber (At page 4/5 of CA No.222-A/1993) :-

Quantity of timer on Actual out turn determined by the Conservator of Forest as appearing from the admitted document Ex. P-33 and Ex.P-34.		**Value at the rates as applied by the Local Commissioner, Justice Ujjagar Singh.**
Deodar	4,00,000 Cft.	Rs.79,36,000/-
Kail	3,00,000 Cft.	Rs.42,28,000/-
Fir	6,00,000 Cft.	Rs.58,46,000/-
Total	13,00,000 Cft.	Rs.1,80,10,000/-

Quantity of timer on Actual out turn determined by the Conservator of Forest as appearing from the admitted document Ex. P-33 and Ex.P-34.	Value at the rates as applied by the Local Commissioner, Justice Ujjagar Singh.
B/d	Rs.1,80,10,000/-

Less: Deduction for extraction, floating and Transport @ rs.3.25 per cft. as accepted by the Learned Commissioner, Justice Ujjagar Singh. Rs.42,25,000/-

Rs.1,37,85,000

Less: Deduction on account of the price (or Royalty) as determined by the learned Commissioner, Justice Ujjagar Singh. Rs.42,82,807/-

Amount due to the Company after correction of erroneous application of clause 8 of the agreement and accepting the Learned Commissioner's determination of the rate for Extracting, floating and for the price (or Royalty) due to Respondent No.1. Rs.95,02,193/-

(ii) The Commission has failed to consider the claim of petitioner company for Rs.2,47,500/- on account of value of 11000 sleepers and scantlings of timber lying at depots of the petitioner company and taken over by respondent Nos. 1 to 3.

(iii) The Commission has also failed to consider the claim of the petitioner company of Rs.4.50 lacs on account of value of 20000 scants/hakries which were in transit.

(iv) The petitioner company also claimed Rs.35,000/- of security deposit along with interest up to 15.12.1971, total amounting to Rs.57,000/-.

(v) The Commission has taken into consideration wholly irrelevant documents and also illegally deducted an amount of Rs.7,73,750.42 towards

alleged supplementary bills from the amount awarded to the petitioner company. Thus, total claim lodged by the petitioner company are Rs.1,02,72,369/-.

Issues No.1 and 2 were decided against the respondents. Whereas, issues No.6,9 and 10 were decided together by holding that the petitioner- company was not entitled to the restoration of the right of lease for the un-expired period. Similarly, issues No. 7 and 8 were also taken up together and decided with the following observations:-

> "In the light of the evidence, the only conclusion possible is that Respondent No.7 advanced additional loan of Rs.6 lakhs to the Company but it was credited to the account of Conservator of Forests, Chenab Circle, Jammu and he was competent to operate it. He used to draw the cheques and the payees in whose names the cheques were drawn had encashed the same. The liability for repayment of the loan will be that of the respondents No.1 to 3."

Thus, the respondent-State was found under an obligation to render the accounts.

Issues No.3, 4, 5, 11 and 12 were taken up together for consideration by the learned Commission and damages were split in the following three parts:-

> " i) Damages suffered by the Company in not providing booms by respondent No.1 and losses suffered because of heavy floods, natural calamities, unvisualised circumstances etc.

ii) Losses on account of machinery installed by the Company.

iii) Losses as a result of abrupt cancellation of lease."

Loss on account of machinery has also been determined while deciding question No.1 above. Thus, point No.(ii) i.e. losses on account of machinery installed by the petitioner-company already stands decided while considering question No.1.

Now the only claim required to be determined is at points No. (i) and (iii).

The contention of the petitioner that the Commission has wrongly applied note appended to Clause 8 of the Lease Agreement to returning the quantity of the timber by reducing the quantity. Clause 8 of the Lease Agreement deals with the removal of the timber extracted from the trees and sold under the agreement on payment of the price. The same is reproduced as under:-

"8. The purchaser(s) shall not remove beyond the limits of the leased area (or such Ghat or Depot as the Divisional Forest Officer may appoint) any part of the timber, extracted from trees sold under this agreement before he/they, has/ have paid the first instalment provided for in clause 6, or the proportionate amount to cover the quantity of timber intended to be removed, nor during such time as any instalments payable by him/them may be in arrears, or any fine or liability incurred by

him/them under this agreement may be unpaid or unsatisfied. Provided that the Forest Minister may in his discretion relax the provision of this clause in deserving cases.

EXPLANATION:- "Launching" covers both launching into the side streams as well as into the main river.

Note:- For calculating the value of timber launched, the proportion of sawn timber will be taken upto 50 and 40 cft. in case of Deodar and Kail respectively and 30 cft. in the case of Chir and Fir and 75 cft. log timber shall be considered to be equivalent to 100 cft. of standing volume of timber at the discretion of the D.F.O. For purposes of assessing proportionate value of timber intended to be removed the Conservator will fix royalty rates from time to time on the actual out-turn. His decision in this respect will be final."

While calculating the quantity of the timber, the Commission has applied note appended to Clause 8 of the Lease Agreement and out of the total earmarked quantity under the agreement proportionate quantity has been calculated in accordance with note appended to Clause 8 of the Lease Agreement which has been evaluated to determine the claim of the petitioner-company. Under this clause, proportion of sawn timber is to be taken as 50, 40 and 30 Cft. out of 100 Cft of standing volume in respect to Deodar, Kail and Fir/ Chir, respectively.

It is contended on behalf of the petitioner that the ratio referred

to in the note of Clause 8 of the Lease Agreement, has no relevance for determining the quantity of the timber for the purpose of assessing its value. Referring to letter dated 31.01.1970 from the Manager, United Commercial Bank, Jammu, addressed to Mr. PN Kaul, Conservator of Forests, Chenab Circle, Jammu, in regard to the out-turn quantity of the timber, it is argued that while determining the out-turn of the market value, quantity seems to be much more than referred to in note appended to Clause 8 of the Lease Agreement. The above letter which is Exhibited as P-33 (File No.5) refers to a discussion between the Manager, United Commercial Bank and the Conservator of Forests with regard to out-turn expected from the lease. It is argued by Mr. Sawhney on behalf of the petitioner that out- turn value comes to more than 80% in case of Kail and more than 65% in case of Fir and seems 100% in case of Deodar. This letter further mentions about 18,000 to 19000 scantlings of mixed sizes and species i.e. Deodar, Kail and Fir in transit by river in addition to stocks which are expected to arrive during February-April, 1970. This letter further refers to the price of the timber and after acceptance, the net margin or profit estimated to Rs.30 lacs. The relevant extract from the letter dated 31.01.1970 (Exhibit P-33) reads as under:-

> "With reference to the discussions held by our Regional Manager and the undersigned alongwith Shri B.K. Kapur with you and your Divisional Forest Officer Mr. Abrol on January 29, 1970, you were pleased to advise us of the working possibilities of the Siraj Lease of the Hindustan Forests Co. (P) Limited.
>
> During the course of discussions it was estimated by you

with regard to the out-turn expected from the lease as under:-

Unworked Compartments	Deodar Marketed Volume/ Out-turn	Kail Marketed Volume/ Out-turn	Fir Marketed Volume/ Out-turn.
39/A	150000 cft. 195000 cft.	40000 cft. 35000 cft.	190000 cft. 160000 cft
39/B	24000 cft. 31000 cft.	31000 cft. 28000 cft.	72000 cft. 120000 cft
40/A	40000 cft. 52000 cft.	133000 cft. 127000 cft.	500000 cft 325000 cft
40/B	15000 cft. 20000 cft.	53000 cft. 47000 cft.	9000 cft 6000 cft.
Total	229000 cft 298000 cft. Say 3 lacs cft.	257000 cft 237000 cft Say 2 lacs cft.	871000 cft 611000 cft. Say 5 lacs cft.
Total			10 lacs.

Compartments under working:-

40/C, 40/D, and 41

Deodar	Kail	Fir	Total
1 lac cft	1 lac cft	1 lac cft	3 lacs cft

Grand total: 13 Lacs

Sale Value:-

Deodar 4 lacs cft @ Rs.14/- per cft.
Rs.56 lacs Say Rs.52 lacs.

Kail 3 lacs cft @ Rs.11 per cft.
Rs.33 lacs. Say Rs.30 lacs

Fir 6 lacs cft. @ Rs.8 per cft.
Rs.48 lacs. Say Rs.45 lacs.

Total Rs.12700000/-

Less Royalty and Govt. Dues Rs.5400000/-
Rs.7300000/-

Less working expenses for 13 lacs cfts
@ Rs.3.25 per cft. Rs.4300000/-

Balance net margin Rs.3000000

(Rupees Thirty lacs. only)

We further understand that 18000/- to 19000/- scantlings of mixed sizes and species i.e. Deodar, Kail and Fir are in transit by River in addition to the above stocks which are expected to arrived during February-April, 1970.

Please let us have your confirmation and comments with regard to the above and also advise us the amount inclusive of Rs.1,00,000/- already placed at your disposal that would be required for working out the lease in a satisfactory manner during the current year to enable us to proceed further in the matter. The sale proceeds of Timber in transit month-wise being expected may also kindly be advised."

I have considered Clause 8 of the Lease Agreement and the note appended thereto. The Commission has rightly applied this note to determine the ratio for the purpose of assessment of the price of the timber. 100% Cft. timber refers to standing volume. Standing volume cannot be calculated as the real quantity of the timber. The quantity is to be determined after the timber is felled, sawn and converted into the scants when it becomes marketable. Under the Lease Agreement, the lessee is entitled to fell, saw and transport the timber and even royalty is payable on the quantity of the sawn-timber. Thus, 100% Cft. standing timber cannot be the basis for determining the value of the scants which are converted after

the timber is felled, sawn etc. The formula prescribed under the note appended to Clause 8 of the Lease Agreement, seems to be realistic. No ground has been mentioned on behalf of the petitioner-company as to why this formula should not be adopted or is otherwise unrealistic. The petitioner-company is bound by the Lease Agreement and conditions therein. Thus, the Commission has rightly applied the formula to determine the quantity of timber for the purposes of assessment of its value.

This contention of the petitioner is, thus, rejected.

Further claim of the petitioner-company that the Commission has failed to consider the claim of the petitioner-company of Rs.2,47,500/- on account of value of 11000 sleepers and scantlings of timber lying at depots of the petitioner-company and taken over by respondent Nos. 1 to 3.

It is further the contention on behalf of the petitioner-company that the Commission has also failed to consider the claim of the the petitioner-company for Rs.4..5 lacs on account of value of 20,000 scants/Hakries which were in transit. Again reference is made to Exhibit P-33 wherein timber in transit by river is mentioned. The relevant extract from the document (Exhibit P-33) reads as under:-

> "Please let us have your confirmation and comments with regard to the above and also advise us the amount inclusive of Rs.1,00,000/- already placed at your disposal that would be required for working out the lease in a satisfactory manner during the current year to enable us to proceed further in the matter. The sale proceeds of Timber in transit month-wise being expected may also kindly be advised."

A similar averment is made in the subsequent letter dated 04.02.1970 (Exhibit P-34). The relevant extract of the same is reproduced as under:-

> "2. The present float of 20,000 scants and Hakries valuing Rs.4.5 lacs are in transit and after its sale and deduction of royalty share of the Department will leave about Rs.1.5 to 2 Lacs as excess."

The Commission in his report has referred to these claims at page 65 of the report in the following words:-

> "The amount of Rs.4,50,000/- is claimed on account of value of 20,000/- scants. The amount of Rs.2,47,500/- is added as value of timber during period between January, 1969 to September, 1969 (11,000/- scants). Thus total claimed amount is rs.1,73,65,000/- plus Rs.4,50,000/- plus Rs.2,47,500/- and it comes to Rs.1,80,62,500/-"

However, while determining the amount payable to the petitioner-company, no finding has been returned regarding these two claims of the petitioner-company.

As regards the claim of the petitioner-company with regard to 20,000 scants/hakries in transit, the same is evident from Exhibits P-33 and P-34. These documents are admitted by both the sides and have not been rebutted. Even in the statement of B.K. Kapur, Managing Director of the petitioner-company, recorded on 07.08.1980, reference is made to 18000 sleepers/scantlings which were floated down to Jammu for which no account has been rendered. However, no material has been referred to with

regard to 11000 sleepers/scantlings of timber allegedly lying at the depot of the petitioner-company and taken over by respondent Nos. 1 to 3. Thus, the claim of the petitioner-company with regard to Rs.2,47,500/- on account of value of 11000 sleepers/scantlings allegedly lying at the depot of the petitioner-company and allegedly taken over by respondent Nos. 1 to 3, is hereby rejected.

As regards the claim of 20,000 scants/hakries valued at Rs.4.5 lacs and were in transit when the letters Exhibits P-33 and P-34 came into existence. There is some conflict in respect to the quantity. In Exhibit P-33, the quantity mentioned is 18000 to 19000 scantlings, whereas in Exhibit P-34, it is mentioned as 20,000 scants. Since the documents are un-rebutted, the petitioner-company is, at least, entitled to claim for 18,000 scants/ hakries and its proportionate value which is determined at Rs.4,05,000/-.

The petitioner-company has also claimed refund of security amount of Rs.35,000/- along with interest @ 12% per annum. Clause 38 of the lease agreement refers to the forfeiture of the security deposits by the lessee in the event the lessee failed to carry out all or any of the terms of the lease. The statement attached with the original lease document indicates payment of Rs.35,000/- in seven instalments of Rs.5000/- each. From the report of the Commission, it appears that there is no mention of the claim of the petitioner-company regarding the security amount of Rs.35,000/-.

It is further the contention of the petitioner-company that the Commission has taken into consideration wholly irrelevant documents

relating to supplementary bills whereby an amount of Rs.7,73,750.42 has been deducted from the claims of the petitioner. At page 83 of the Commission's report, the Commission has taken into consideration an amount of Rs.7,73,750.42 on account of supplementary bills in addition to royalty amount of Rs.48,60,000/- allegedly payable by the petitioner-company to the respondents. These supplementary bills have been claimed by the State-respondents on account of expenses incurred in execution of the lease. From the claim of the State-respondents as also the calculation made by the Commission, it appears that an amount of Rs.3.25 per Cft. has been charged from the petitioner-company on account of expenses incurred by the State for working out the lease. In this manner, the State has claimed expenses @ Rs.3.25 per Cft. on the quantity of timber stated to be sold and at the same time an additional amount of Rs.7,73,750.42 has also been claimed as a supplementary bills for the same purpose. The nature of the supplementary bills has not been disclosed in the reply. No details of the same have been given in any manner. The Commission has taken note of this additional amount claimed from the petitioner-company and adjusted the same. It seems that there is an over-lapping. Once the State has claimed expenses at the rate of Rs.3.25 per Cft., then the supplementary/additional bill for Rs.7,73,750.42, is not justified unless it is established on record that this amount pertained to expenses other than the working of the lease. This amount of Rs.7,73,750.42 is, thus, also not payable by the petitioner-company to the State-respondent and has been wrongly deducted from the claims of petitioner-company.

The learned Commission has taken the following quantity of

the timber for purpose of determining the claim of the petitioner-company:-

Deodar	2,00,000 Cft.
Kail	1,20,000 Cft.
Fir	1,80,000 Cft.

The average whole-sale price of Deodar, Kail and Fir/Chir, during the period 1969-70, 1970-71 and 1971-72 at Jammu Centre has been indicated in Exhibit PW-4/2 (File No.1,at page 122). This value has been determined by the Divisional Forest Officer, Statistical Division, Srinagar (Kashmir). There are separate whole-sale rates for Srinagar and Jammu. The reason being that if timber is to be sold at Srinagar, it is further to be transported to Jammu for onwards transportation to other parts of the country and, thus, the rates/prices at Srinagar were less than Jammu. It is admitted case of the parties that the timber was to be sold at Jammu. Thus, the price prevalent at Jammu is relevant for the purpose of assessing the amount for the whole-sale price during 1969-70, 1970-71 and 1971-72, which are as under:-

Year	Deodar	Kail	Fir	Chir
1969-70	16.57	11.54	7.75	8.12
1970-71	17.75	12.36	7.83	8.05
1971-72	17.8	12.85	10.65	8.83

This document is admitted by the State-respondents in their reply.

It has come in the finding of the learned Commission as also the learned Single Judge that no specific date has come out from the record as to when the lease was actually taken over by Forest Department, though letters Exhibits P-33 and P-34 are indicators that lease was taken over

during the period 1960-70. The details of the sale made have not been produced. Thus, the learned Commission has taken the average rates for these three years to determine the value of the timber sold. The learned Commission has calculated the rate/price of Deodar, Kail and Fir in the following manner:-

Deodar	Rs.39,68,000
Kail	Rs.16,91,200/-
Fir	Rs.17,53,800/-
Total	Rs.74,13,000/-

The Commission has further reduced the value by Rs.3.25 per Cft. being expenses for extraction, floating and transportation of timber, total of which comes to 13,00,000 Cft. as per letter Exhibit P-33 and reduced an amount of Rs.16,25,000/- from the claim of the petitioner-company i.e. Rs.74,13,000/-. Thus, the net payable claim comes to Rs.57, 88,000/-. The claims of the State-respondents have also been worked out in the following manner:-

Royalty	Rs.48,60,000/-
Supplementary bills	Rs.7,73,750.42/-
Total	Rs.56, 33, 750.42.

The learned Commission has further held that the above amount is for the period from 17th July,1963 to January, 1973. The amount already received by the State on account of royalty is Rs.13,51,943.22 and, thus, the balance comes to Rs.42,81,807.20. The Commission thus, found an amount of Rs.14,05,192.80 payable to the petitioner-company plus

interest at the rate of 12% per annum. There seems to be some mistake in calculation. After reducing Rs.4281807.20 from the amount determined and payable to the company i.e. Rs.57,88,000/-, the balance amount decreed in favour of the petitioner-company has been determined by the learned Commission at Rs.14,05,192.80. However, from the calculation, it appears that this amount comes to Rs.15,06,193/-

From the discussion made above, it is found that the learned Commission has awarded an amount of Rs.7,73,750.42 to the State on account of supplementary bills being expenses incurred by the State in execution of the lease. The learned Commission has also allowed the expenses to the State @ Rs.3.25 per CFT for which an amount of Rs.16,25,000/- has already been awarded in favour of the State. The State is not entitled to this amount of additional bill in this regard. This amount has been wrongly allowed to the State and deducted from the claim of the petitioner-company. The petitioner-company is, thus, found entitled to the additional amount of Rs.7,73,750.42. It has also been found that at least 18000 scantlings/hakries have been mahaned which is the property of the petitioner-company. This fact is evident from the documents Exhibits P-33 and P-34. The petitioner has claimed Rs.4.5 lacs as value of 20,000 scantlings/hakries. I have already referred to this aspect hereinabove and the petitioner's claim for 18000 scantlings/hakries can only be admitted. Proportionate value for this has been assessed as Rs.4,05,000/-. Thus, the total amount payable to the petitioner-company comes to (Rs.15,06,193+ Rs.7,73,750.42 + Rs.4,05,000+ Rs.35000/-) Rs.27,19,943.42 in addition to Rs.8,50,000/-, the value of machinery awarded while deciding Point No.1. The petitioner-company is also entitled to interest at the rate of 12% per

annum on the aforesaid amount with effect from 01.04.1973 i.e. the date when the lease was to expire. Mr. RK Chhibbar, learned Senior Counsel appearing for the State of Jammu and Kashmir took lot of pain to take me to the counter claims of the State-respondent. However, these claims have not been established on record by any material/evidence. Counter claims of the State-respondents are liable to be rejected for the following reasons:-

The State-respondents though appeared and filed a written statement to the company-petition and also lodged counter claims, however, the State-respondents were set ex-parte vide order dated July 20, 1984 passed in the company-petition. The State-respondents, thereafter made a Company Application No.167 of 1985 for setting aside the ex-parte order. This application came to be rejected vide order dated November 15, 1985, though the applicant-State-respondents were allowed to participate in the proceedings thereafter. The State-respondents led no evidence in support of their counter claims or even to rebut the evidence produced by the petitioners. It is also noticed that in one of the appeals preferred by the petitioner- M/s. Hindustan Forest Company (Pvt.) Limited being Company Appeal No.39 of 1986, a joint Memo was filed by the parties including the State of Jammu and Kashmir stating therein that the evidence recorded in Company Petition N.35 of 1975 shall be treated as evidence in Company Petition No.48 of 1981. It was further recorded that all the parties in both the petitions shall be treated as having closed their evidence in both the petitions.

Mr. A.G. Masih, learned counsel for the respondents is a signatory to the joint memo. Pursuant to this joint memo, Hon'ble Division

Bench of the High Court accepted the joint memo and directed the disposal of the Company Petition No.35 of 1975 and Company Petition No.48 of 1981. In the absence of there being any evidence led by the State-respondents or in rebuttal, the counter claims of the State-respondents made in the reply, cannot be accepted. Hence, the counter claims of the State-respondents are hereby rejected.

In view of the above, the Commission's report is modified to the above extent and the claim of the petitioner is decreed for Rs.27,19, 943.22+ Rs.8,50,000/- plus interest at the rate of 12% per annum with effect from 01.04.1973 till the amount is actually paid. No costs.

26.07.2011 (PERMOD KOHLI)
BLS JUDGE

Note: Whether to be referred to the Reporter? YES/ NO